

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

W.A.No.1887 of 2007

AGAINST THE JUDGEMENT IN W.P.(C).NO.14692/2006-Y DATED 25/06/2007
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APPELLANT: IST RESPONDENT IN WP(C):-

SURENDRA MANJESHWAR,
S/O.LATE PANJI, YELLUPADPU, HOSANGADI,
MANJESWAR, KASARAGOD.

BY PARTY-IN-PERSON.

RESPONDENTS: PETITIONER AND RESPONDENTS 2 TO 6 IN WP(C):-

1. SMT.M.JAYANTHI, W/O.MONA,
D/O. SMT.PODI, AGASARAMOOLE,
POYYAKANDA, BENGARA MANJESWARA,
NEAR RLY. GATE, HOSANGADI, KASARAGOD TALUK.
2. THE TAHSILDAR, TALUK OFFICE, KASARAGOD.
3. THE SUB COLLECTOR, KASARAGOD AT KANHANGAD.
4. THE COMMISSIONER, LAND REVENUE,
PUBLIC OFFICE BUILDING, MUSEUM JUNCTION, TRIVANDRUM.
5. SUNDARA.M., S/O.LATE PANJI, HOUSE NO.560,
WARD NO.7, HOSANGADI, (IS R1'S (APPELLANT'S) HOUSE)
BUT R5'S ADDRESS AS ANGADIPADAVU, VIA. MANJESHWAR,
KASARAGOD TALUK (BECAUSE R5 HAS MIGRATED TO KARNATAKA
AND DIED ON 5.6.2007
LEAVINGS ELDEST SON SADASIVA.M., AS HIS SUCCESSOR,
CHAKRAPANI, ATTAVAR, MANGALORE.
6. ZUHARA.B.M., W/O.MOHAMMED RAZAK,
GARDEN HOUSE, UDYAWARE VILLAGE, KASARAGOD TALUK.

R2 TO R4 BY SENIOR GOVERNMENT PLEADER SMT.MEERA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:-

Dated, this the 31st day of July 2007

JUDGMENT

K.T.Sankaran,J.

The first respondent in W.P.(C).No.14692 of 2006 is the appellant. The writ petition was filed by the 1st respondent Jayanthi. Hereinafter parties are referred to as the appellant and Jayanthi.

(2) The property in dispute is 47 cents of land in Re-survey No.87/9 and 20 cents of land in Re-survey No.87/8 of Manjeshwar Village in Kasaragod district. In the year 1936, the land was assigned to Panchi and his wife Korapaly. The appellant, Podi and the 5th respondent in the writ petition, viz., Sundara, are the children of Panchi. Podi died and her daughter is Jayanthi.

(3) It would appear that in 1937 the assignment in favour of Panchi and Korapaly was cancelled. It would further appear that the land was not resumed and their possession continued as assignees. As per a direction issued by the Revenue authorities on 20.4.1959, Panchi and Korapaly filed an application for the issue of Patta. That application was filed by them on 18.5.1959. There is no record to show that that application was considered in their favour or against them or the land was resumed from them. The findings in the earlier proceedings which led to Exhibit P8 judgment of this Court would indicate that the possession continued with Panchi and Korapaly.

(4) On an application dated 22.12.1986 filed by Jayanthi, a portion of the land was assigned to her by the Land Assignment Authority. That order was challenged in appeal by the appellant as well as the 5th respondent in the writ petition, viz., Sundara. The appeal was dismissed by the Appellate Authority. A revision was taken before the Board of Revenue. The Board of Revenue also dismissed the revision. A further revision was filed before the Government. Government disposed of the revision and the matter was remanded to the

Special Tahsildar as per order dated 23.11.1998. After remand, the Special Tahsildar passed an order to assign the land to Jayanthi. That order was passed without hearing the appellant and Sundara. The appellant filed O.P.No.29307 of 2002 before this Court challenging the order passed by the Special Tahsildar wherein Exhibit P8 judgment dated 13.6.2003 was passed. The order passed by the Special Tahsildar was set aside and the Special Tahsildar was directed to consider the matter afresh in accordance with the Land Assignment Rules and the provisions of the Land Conservancy Act and to pass appropriate orders. It was also held that an opportunity shall be given to the appellant and all other persons interested.

(5) It is relevant to note that the case of the appellant herein before this Court in O.P.No.29307 of 2002 was that the legal representatives of Panchi were in possession of the property having an extent of 87 cents and, therefore, Jayanthi had no right to get assignment in her own name. That contention was noticed by this Court in the judgment in O.P.No.29307 of 2002, which reads thus:

“It was the case of the petitioner that the legal representatives of Panchi were in possession of the property having an extent of 87 cents. The 3rd respondent filed an application for the assignment of 67 cents in 1986. It appears that the 3rd respondent is the daughter of Smt.Podu, the sister of the petitioner”.

(6) After Exhibit P8 judgment, the Tahsildar passed a fresh order dated 26.10.2004 (Exhibit P11), cancelling the assignment in favour of Jayanthi. An appeal was filed by her, which was disposed of as per Exhibit P14 order dated 9.8.2005 confirming Exhibit P11 order. A revision was filed, which was also dismissed as per Exhibit P17 order dated 29.4.2006. That order was challenged

by Jayanthi in W.P.(C).No.14692 of 2006, from which the Writ Appeal arises.

(7) The learned Single Judge after considering all relevant aspects of the matter and perusing the relevant documents held that Jayanthi and all the other legal representatives of Panchi and Korapaly are having equal rights in the property. After having found that the legal representatives of Panchi and Korapaly were never dispossessed and they had continued in possession, the learned Single Judge directed the Tahsildar to consider the case afresh in accordance with law and in the light of the observations contained in the judgment. It was held by the learned Single Judge that neither the initial authority under the Kerala Land Assignment Rules nor any among the superior authorities had considered the issue in the correct perspective by ascertaining whether the applicants had satisfied the statutory requirements under the Assignment Act or the Rules. It was held that no finding as enjoined by law has been entered by the authorities in the impugned orders. The learned Single Judge further held as follows:-

“Therefore, if Panchi and Korapaly had continued to be in possession on the basis of assignment under the Assignment Rules or on the basis of their possession which was, at the worst, an encroachment not objectionable in terms of the Assignment Rules, the benefit of such possession shall inure to the benefit of all persons entitled to claim as part of the family of Panchi and Korapaly, without any distinction on the basis of sex or otherwise. This means that Panchi and Korapaly having left behind respondents 1 and 5 and two other children, including the mother of the petitioner, all of them should be held entitled to equal share, if at all they are held entitled to separate parcels in the holding which was in the possession of Panchi and Korapaly. So much so, any assignment thereafter could have been only in the name of and in favour of all of them equally. The question of considering one or more of the children of Panchi and one of his grand-daughters as rival claimants for the purpose of assignment in terms of the Assignment Act and Assignment Rules, does not therefore arise. Any such treatment of their entitlement would be plainly opposed to the scheme of the Assignment Act and Assignment Rules, in the

backdrop of the equality principle enshrined in the Constitution”.

(8) The appellant, who appeared as party in person, submitted that the learned Single Judge was not justified in directing a fresh look into the matter and directing the Tahsildar to consider the whole matter afresh. He further submits that Jayanthi had no right to get assignment of the land.

(9) The appellant is not in a position to say what is his exclusive right in respect of the property. He could claim any right only under Panchi and Korapaly. He cannot have exclusive right as contended by him. If at all any person is entitled to get assignment under the Act, all the legal representatives of Panchi and Korapaly would have the right to get that right as rightly held by the learned Single Judge. No grounds are made out in the appeal which would warrant our interference with the judgment passed by the learned Single Judge.

The Writ Appeal lacks merits and it is accordingly dismissed.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-